



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**Agenda**

**Meeting of September 8, 2004**

9:00 a.m., Commission Offices, 242 State Street, Augusta, Maine

**1. Ratification of minutes of July 21, 2004 meeting**

**2. Contributions by Lobbyists and Lobbyist Associate**

In March 2004, Representatives Janet Mills and Thomas Saviello accepted contributions from lobbyists or lobbyist associates while the Legislature was in session. The Legislators' acceptance of the contributions – and the making of the contributions – appear to be prohibited by Title 1 M.R.S.A. §1015(3). Both Legislators have responded that they intended to comply with the restriction, and did not knowingly accept contributions from lobbyists during the session. *Recommendation: the Commission staff proposes that the campaigns return the contributions and that the Representatives reimburse the campaigns from their personal funds (\$25 for Rep. Mills and \$75 for Rep. Saviello).*

**3. Request for Investigation: Advertisement for Fundraiser for Rep. Earl Richardson, Rep. James D. Annis, and Sen. Paul T. Davis, Sr.**

The Chair of the Maine Democratic Party filed a complaint against Rep. Earl Richardson, Rep. James D. Annis, and Sen. Paul T. Davis, Sr. regarding the attached newspaper advertisement publicizing a lobster event. The complaint suggests that Rep. Annis' and Sen. Davis' receipt of private contributions from the event would violate the Maine Clean Election Act. Both Sen. Davis and Rep. Annis have responded in writing that they received no private funds from the event. Rep. Richardson has stated to the Commission staff by telephone that the event lost money and was never intended as a fundraiser for the candidates involved, in spite of the language in the ad. Because he helped organize the event, Rep. Richardson has agreed to attend the Commission's August 8 meeting to answer any questions of the Commission members. *Recommendation: the Commission staff recommends a finding that no violation has occurred and that no further investigation is necessary.*

**4. Request for Investigation: Palmcards Paid for by Sen. Stephen S. Stanley**

The Chair of the Maine Republican Party filed a complaint against Sen. Stephen S. Stanley regarding a palmcard that he reportedly purchased with his personal funds and distributed at parades. The complaint states that the palmcard promotes Sen. Stanley's election and amounts to a contribution to his campaign that is impermissible under the Maine Clean Election Act. The complaint suggests that Sen. Stanley's opponent is

entitled to matching funds on the basis of the card. Sen. Stanley has responded to the Commission staff by telephone that he believed the card was an acceptable communication to his constituents. The complaint notes that the palmcard has been distributed in three towns that have not been part of Sen. Stanley's district, but will be part of his new district. *Recommendation: the staff recommends that the Commission request that Sen. Stanley's campaign use some of its Maine Clean Election Act funds to reimburse the Senator for the expenditure, without a finding of violation.*

#### **5. Request for Investigation: Donation of Wood for Campaign Signs of Charles Harlow**

Mary Beth Williams submitted a request for an investigation alleging that legislative candidate Charles Harlow (Ms. Williams' primary election opponent) received materials (wood) for signs from former Portland City Council candidate Will Gorham. She alleges that the wood was an illegal in-kind contribution under the Maine Clean Election Act. Mr. Harlow has responded by telephone that he belongs to a group of municipal candidates who have shared materials for signs in past elections, and that most – if not all – of his signs in his current legislative campaign were made from signs he used in his previous municipal campaigns. Mr. Harlow also responds that he telephoned the Commission staff for guidance, and as a result he believed that his use of these materials was acceptable. The legal definition of expenditure is attached, which excludes some purchases of signs and literature made during previous election cycles.

*Recommendation: the Commission staff recommends a finding of no violation, in light of the uncertainty of whether Mr. Harlow used all of these materials in previous elections and the candidate's good faith in consulting the Commission.*

#### **6. Appeal of Denial of Request for Certification/Arthur W. Keenan**

In order to receive public campaign funds under the Maine Clean Election Act (MCEA), a candidate must accept 50 qualifying contributions (\$5 checks or money orders) after submitting the Declaration of Intent form to the Commission. The declaration is a notarized statement that the candidate intends to run as a MCEA candidate. The Commission staff has attached the legal provisions requiring the filing of the declaration before any qualifying contributions are accepted.

Arthur W. Keenan received 53 contributions, but six of them were received on July 25 or 26 – one or two days before he signed his Declaration of Intent on July 27. Because these were accepted before the DOI was signed, the Commission staff denied his request to be certified as a MCEA candidate. Mr. Keenan has filed the attached appeal of the staff determination.

#### **7. Appeal of Denial of Request for Certification/Denis A. Morse**

The Maine Clean Election Act and Commission Rules require that a candidate must submit his or her request for certification during the qualifying period within which the candidate must collect the \$5 qualifying contributions. (21-A M.R.S.A. Section 1125(4) and Chapter 3, Section 4(1)(A) of the Commission's Rules are attached.) Replacement candidates have a qualifying period of 30 days beginning on the fourth Monday in July, which in 2004 began on July 26 and ended on August 24. The Ethics Commission staff

attempted to publicize the August 24 deadline by distributing the attached memo and posting it on the Commission Web site. The staff denied Denis Morse's request for certification because he submitted it on August 26, two days after the conclusion of the qualifying period. Mr. Morse has submitted an appeal, which states that he mistakenly believed he had a full month from July 26 to August 26.

#### **8. Appeal of Denial of Request for Certification/Kathleen M. Dougherty**

Similar to Mr. Morse in the preceding item, Kathleen M. Dougherty submitted her request for certification on August 26, believing that she had one month from July 26. The Commission staff denied her request as late, and Ms. Dougherty has appealed.

#### **9. Request for Waiver of Seed Money Restrictions/Caspar Weinberger, Jr.**

Caspar Weinberger, Jr. is a replacement candidate for the House of Representatives, who has requested certification as a Maine Clean Election Act candidate. He raised \$500 in seed money contributions for his campaign and spent \$496.33. He also entered into an obligation to the Bangor Letter Shop for printing costs of \$2,850.

The policy of the Commission staff is that the total amount of a candidate's expenditures *and obligations* cannot exceed the amount of seed money contributions collected. This policy has been based on the statutory provisions stating that obligations are expenditures, and that "a candidate may collect and spend only seed money contributions ... during the qualifying period." (Emphasis added.) 21-A M.R.S.A. §1125(9).

The Commission staff has not granted Mr. Weinberger's request for certification because the total of his expenditures and obligations (\$3,350) exceeded the \$500 in seed money that he collected. He has submitted the attached request for a waiver of this restriction.

*Recommendation: the Commission staff recommends granting the waiver because it granted six waiver requests involving similar circumstances on April 21, 2004 and because the restriction is not well-publicized in the Commission's guide to the MCEA.*

#### **10. Request for Waiver of Seed Money Restrictions/Philip A. Curtis**

Philip A. Curtis is a candidate for the House of Representatives who has requested certification as a Maine Clean Election Act candidate. Prior to submitting his request for certification, he received \$500 in seed money contributions and the total of his expenditures and obligations was \$544.34.

The policy of the Commission staff is that the total amount of a candidate's expenditures *and obligations* cannot exceed the amount of seed money contributions collected. This policy has been based on the statutory provisions stating that obligations are expenditures, and that "a candidate may collect and spend only seed money contributions ... during the qualifying period." (Emphasis added.) 21-A M.R.S.A. §1125(9).

The Commission staff has not granted Mr. Curtis's request for certification as a Maine Clean Election Act candidate because the total of his expenditures and obligations (\$544.34) exceeded the \$500 in seed money that he collected. He has submitted the

attached request for a waiver of this restriction. The Commission staff will make its recommendation on his request to the Commission members following the September 8 presentation by the candidate.

#### **11. Request for Waiver of Seed Money Restrictions/Andrea Boland**

Andrea Boland is a replacement candidate for the House of Representatives who has applied for certification as a Maine Clean Election Act candidate. She accepted \$500 in seed money contributions. In addition, she took out a bank loan to cover campaign expenses before she was certified as a Maine Clean Election Act candidate. Her campaign finance report seems to indicate that she spent \$976.50 of these funds for campaign goods and services, and obligated another \$1,625.

This activity does not comply with the seed money restrictions in three ways: (1) prior to certification, Ms. Boland spent funds other than seed money contributions; (2) if the bank loan is considered to be a contribution, Ms. Boland has accepted contributions exceeding the \$500 limit, including more than \$100 from one source; and (3) her expenditures and obligations exceed the \$500 in seed money contributions she collected. These restrictions are noted in the attached legal provisions.

In the view of the Commission staff, the Commission's Guide to the Maine Clean Election Act and a memo specifically written for replacement candidates provided adequate notice that private funds received prior to certification must be restricted to seed money contributions, which are limited to \$100 per contributor (including funds from the candidate).

For these reasons, the Commission staff has not granted Ms. Boland's request for certification as a Maine Clean Election Act candidate. She has submitted the attached request for a waiver of this restriction.

#### **12. Guidance Regarding Recounts in the 2004 General Election**

At the July 21 meeting, the Commission members requested that the Commission staff develop written guidance clarifying how candidates in the 2004 general election may pay for goods and services received in connection with any recounts that may occur. A memo is attached.

#### **13. Request for Matching Funds Determination/Richard Rhames**

Richard Rhames is a Maine Clean Election Act candidate who sought the Democratic nomination for the House of Representatives, District 137, in Biddeford. His primary election opponent was Alan Casavant, a traditionally financed candidate. They were involved in a recount that was decided by the Maine Supreme Judicial Court. Mr. Rhames obtained an attorney who was willing to represent him *pro bono*. With the hope of paying the attorney nevertheless, the candidate has requested a determination whether he is entitled to matching funds based upon Mr. Casavant's cash receipts for the primary election and his receipt of volunteer legal services provided by a private law firm for the recount. This requires a determination whether the law firm's compensation to the attorneys who provided legal services at no charge to Mr. Casavant constituted an in-kind

contribution by the law firm to Mr. Casavant. In order to make this determination, the Commission staff has requested information regarding the value of services provided by the law firm.

#### **14. Possible Maine Clean Election Act Violation/Les Fossel**

Les Fossel was a Maine Clean Election Act candidate for the Republican nomination for State Senate, District 20. Following the June 8, 2004 primary election, he was involved in a recount that was decided in the Maine Supreme Judicial Court. Because Mr. Fossel was involved in a tie vote following the Secretary of State's consideration of the votes cast, he used some of his personal funds to pay an attorney for a legal brief to present to the Court. This may have been in violation of 21-A M.R.S.A. §1125(6), which limits a participating candidate's expenditures to revenues received under the Maine Clean Election Act.

#### **15. Late Filing of 48-Hour Report by Casinos No!**

The Casinos No! political action committee was one day late in submitting a 48-Hour report due June 7. Based on the statutory formula in the Election Law, the presumptive penalty is \$229.54. The PAC has requested a waiver of the penalty. *Recommendation: because the PAC has not been late previously this biennium in submitting a campaign finance report, the staff recommends that the penalty be reduced by 50% to \$114.77.*

#### **16. Request for Guidance from Trade Associations on Independent Expenditures**

A number of trade associations have requested guidance regarding the 2003 change in the law of independent expenditures. Because of this change, communications in the last 21 days before an election that refer to a candidate may be presumed to be reportable independent expenditures that will trigger matching funds – even if the communications do not expressly advocate the election or defeat of a candidate. The Commission members gave some preliminary consideration to the questions at their July 21 meeting, and requested that the Commission staff research the question of whether an employer's communications to its employees are excluded from the legal definition of campaign "expenditure" by the same exception that applies to a membership organization's communications to its members. A memo and draft response are attached, along with some written comments submitted by the Maine Citizen Leadership Fund.

#### **17. Section 527 Organizations**

The staff will discuss the accountability of Section 527 organizations for reporting contributions and expenditures made in the 2004 elections for state office.

#### **18. Rule-Making Regarding Deadline for Reporting Independent Expenditures Greater than \$250**

Under the Commission's Rules, independent expenditures in excess of \$250 have been required to be reported within 48 hours of making the expenditure. At its July 21 meeting, the Commission adopted for public comment the attached rule amendment that would shorten the reporting deadline to within 24 hours of making the expenditure. This would make the deadline in the Commission's Rules consistent with recent legislation that amended statutory deadlines for large contributions and expenditures close to an

election from within 48 hours of the contribution or expenditure to within 24 hours. The Commission received no comments on the proposed amendment during the comment period. The Commission staff recommends adoption of the rule amendment.

### **19. Meeting Dates in October**

During the last 60 days before an election, the Commission is required to meet every two weeks. The Commission members had conflicts with the two October dates proposed at the July 21 meeting, so it may be helpful to decide on two other meeting dates in October.

### **Other**

Miscellaneous as needed.

### **EXECUTIVE SESSION**

If necessary.

### **ADJOURNMENT**